

**LEASE UNDER TRANSFER OF
PROPERTY ACT.1882
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LEASE

ESSENTIAL ELEMENTS OF LEASE

RIGHTS AND DUTIES OF LESSEE
AND LESSOR

TERMINATION OF LEASE

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LEASE UNDER TPA

(Section 105 – 117)

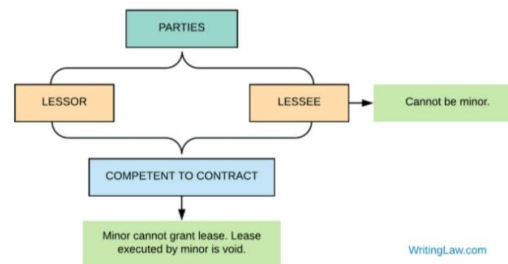
LEASE IS TRANSFER OF POSSESSION



**Lease is not transfer of ownership of property,
only possession is given.**

The transferor is called **Lessor** (Landlord) and
the transferee is called **Lessee** (Tenant)

ESSENTIAL ELEMENTS OF LEASE



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In India, transfer of property is not possible for every individual because of financial issues. The permanent or absolute transfer is a luxury for some people, but a temporary transfer is something that has given every citizen the right of enjoying any property. One of the modes of transferring property for a particular period of time is Lease. Lease is a transfer of an interest in the property for a stipulated period of time without transferring the ownership of that property. In a lease, right of possession is transferred instead of the right of ownership. Transferor here is called the lessor and the transferee i.e. the one enjoying the property for a period is called lessee. Lease is governed by the **Transfer of Property Act, 1882** and it is given from **Sections 105 to 117**.

Definition of Lease

Section 105 states the definition of a lease which states that it is a transfer of immovable property for a particular time period for a consideration of which the transferee has accepted the terms surrounding the agreement.



What are the essentials of a lease?

- Parties must be competent: The parties in a lease agreement should be competent to enter into a contract. Lesser should be entitled to a property and have absolute rights over that property.
- Right of possession: Ownership rights are not transferred in a lease, only the possession of the property is transferred.
- Rent: Consideration for a lease can be taken in the form of a rent or premium.
- Acceptance: Lessee, who is to get the interest in the property after lease, has to accept the lease agreement along with the time period and terms & conditions imposed on the transfer.
- Time Period: Lease always takes place for a particular time period which is to be specified in the lease agreement. It can be relaxed at the option of the lessor.



Section 106 provides for the **duration of the lease in the absence of the lease agreement**. It lays down that in the absence of a contract, lease can be ended by both parties to the lease by issuing a notice to quit. The prescribed time period always commences from the date of receiving the notice to quit. Following are the circumstances:

Purpose	Term (Deemed)	Notice	Prescribed End
Agricultural or manufacturing purpose.	Year to Year	6 month	1 year
Any other purpose.	Month to Month	15 days	1 month



In this table, there is a distinction of two purposes in regard to **Section 106** i.e. Agricultural or manufacturing and other purposes. Hence, two things can be derived from this table:

1. When a lease for Agricultural or manufacturing purpose is deemed to be of year to year, then it will attract a 6-month notice that the lease will end on the expiry of 1 year from the date of the commencement of the lease.
2. When a lease for any other purpose is deemed to be of the month to month, then it will attract a **15-day notice** that the lease will end on the expiry of 1 month from the commencement of the lease.

There is proviso to this section which states that the notice to quit in this section should be written and conveyed to the party who is required to abide by it. If this is not possible then it should be attached to a conspicuous place in that property.



How is a lease executed?

Section 107 states about lease how made. This section covers three aspects:

1. When there is a lease of Immovable property for a **term of 1 year** or more – This can only be made by a registered deed.
2. All other leases of Immovable property – Can be either made by a registered deed or an oral agreement or settlement along with the transfer of possession of that property.
3. When the lease is of multiple properties that require multiple deeds, it will be made by both the parties of the lease.

In the case of **Punjab National Bank v. Ganga Narain Kapur** (1.), Court held that if the lease is done through an oral agreement, then the provisions of Section 106 will apply.



Rights and liabilities of Lessor and lessee

Rights of the lessor are

1. A lessor has a **right to recover the rent** from the lease which was mentioned in the lease agreement.
2. Lessor has a **right to take back the possession** of his property from the lessee if the lessee commits any **breach of condition**.
3. Lessor has a **right to recover the amount of damages** from the lessee if there is any damage done to the property.
4. Lessor has a **right to take back the possession** of his property from the lessee on the **termination of the lease term** prescribed in the agreement.



Liabilities of the lessor

1. The lessor has to **disclose any material defect** relating to the property which the lessee does not know and cannot with ordinary supervision find out.
2. Lessor is **bound by the request** of the lessee to give him the **right of possession** over his property.
3. Lessor can enter into a **contract** with the lessee if he agrees to abide by all terms and conditions prescribed in the agreement, he can enjoy the property for the rest of the time period without any interference with an **obligation to pay the rent later on.**



Rights of the lessee

1. During the period lease is in effect if any **alteration** is made (alluvion for the time being in force) then that alteration will **come under that same lease**.
2. If a significant part of the property that has been leased is destroyed wholly or partly by fire, by flood, by war, by the violent acts of the mob or by any other means resulting in its inefficiency of being a benefit for the lessee. If this happens, the lease is voidable at his option.

There is a proviso to this section that states if the damage is done due to any act of the lessee himself, this remedy will not be available for him.

1. Lessee has the right to deduct any expenses he has made for repairs in the property from the rent if the lessor has failed to in reasonable time.



1. Lessee has the right to deduct any expenses he has made for repairs in the property from the rent if the lessor has failed to in reasonable time.
2. Lessee has a right to recover any such payment which a lessor is bound to make by can deducting it from the interest of the rent or directly from the lessor. He has this right when the lessor has neglected to make that required payment.
3. Lessee has a right to detach all things that he may have attached in the property or earth. His only obligation is that he has to leave the property in the same condition as he received it.
4. When a lease is of unspecified duration in the lease agreement, lessee or his legal representative have a right to collect all the profits or benefits from the crops which were sown by the lessee at that property. They also have a right of free ingress and egress from such property even if the lease ends.



Liabilities of the lessee

1. Lessee is under an obligation to disclose all related material facts which are likely to increase the value of the property for which the lessee has an interest in and the lessor is not aware of.
2. Lessee is under an obligation to pay the rent or premium which is settled upon in the agreement to the lessor or his agent within the prescribed time.
3. Lessee is under an obligation to maintain the property in the condition that he initially got the property on commencement of the lease and he has to return it in the same condition.
4. If lessee gets to know about any proceedings relating to the property or any encroachment or any interference, then lessee is under an obligation to give notice to the lessor.



5. Lessee has a right to use all the assets and goods which are on the property as an owner would use which is preserving it to the best of its nature. He is although under obligation to prevent any other person from using that asset or good for any other purpose from what was prescribed in the lease agreement.
6. The lessee cannot attach any permanent structure without the consent of the lessor except for the purpose of agriculture.
7. Lessee is under an obligation to give the possession of the property back to the lessor after the expiry of the prescribed term of the lease.



How does a Lease end?

Determination of lease

Section 111 states about the determination of the lease, which lays down the ways in which lease is terminated:

1. **Lapse of time** – When the prescribed time of the lease expires, the lease is terminated.
2. **Specified event** – When there is a condition on time of lease depending upon a happening of an event.
3. **Interest** – Lessor's interest to lease the property may cease, hence resulting in the termination of the lease.
4. **Same owner** – When the interest of both lessor and lessee are transferred or vested in the same person.
5. **Express Surrender** – This happens when the lessee ceases to have an interest in the property and comes into a mutual agreement with the lessor.



6. **Implied Surrender** – When the lessee enters into a contract with another for the lease of property, this is an implied surrender of the existing lease.

7. **Forfeiture** – There are three ways by which a lease can be terminated:

- When there is a **breach of an express condition** by the lessee. The lessor may get the possession of the property back.
- When lessee **renounces his character** or gives the title of the property to a third person.
- When the lessee is termed as **insolvent** by the banks, and if the conditions provide for it, the lease will stand terminated.

8. **Expiry of Notice to Quit** – When the notice to quit by the lessor to the lessee expires, the lease will also expire.



What is notice to quit and what happens after it?

Notice to quit is a formal written statement that is issued to the lessee if the lessor desires to end the lease agreement, whether on the expiry of the duration as stated under Section 106 or on grounds specified in Section 111.

Any lease can be forfeited as mentioned in the sub-clause (g) of Section 111, by acceptance of the notice to quit.

But **Section 112**, states that if the lessor after initiating the process of termination of the lease on the grounds of forfeiture accepts any rent from the lessee, it will be understood that the lease will still exist and the termination and notice to quit has been waived.



Section 113 provides **two ways** in which the notice can be waived, that is expressly or impliedly.

1. Express Waiver of notice to quit –

When a lessor accepts the rent from the lessee after the notice to quit has been served, this is called express waiver of notice to quit.

2. Implied Waiver of notice to quit –

When a lessor issues notice to quit to the lessee, and upon expiry of that notice, lesser issues another notice to quit to the lessee. The first notice to quit is impliedly waived.

Waiver of notice also shows the intention to continue the existing lease.



Effect of Holding over

Section 116 states about the **effect of holding overlays** down that if there has been a waiver of notice to quit, it will not be called a new lease instead it will be called as a lease on sufferance or tolerance without objecting against it. The term 'Holding over' stands for retained possession of a property which has been leased. After this, the lease is renewable as any normal lease and in the way prescribed in Section 106.

This section provides that if the lessor agrees to the holding over of the property by the lessee, it will be renewed. But if the lessor does not entertain the retained possession by the lessee, he can initiate suit proceedings against him on grounds of trespass or tenant at sufferance.

